HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal (C.) No.582 of 2006

Appellant (Non-Applicant No.3)	United India Insurance Company, Near Anupama Talkies, Jagdalpur (C.G.)
	versus
Respondents (Applicant)	1. Rajkumar Mandavi, S/o Late Hiralal Mandavi, aged 35 years, R/o Samrat Nagar Sukma, P.S. Sukma, Distt. Dantewada (C.G.)
(Non-Applicant No.1)	2. Subhash Chandel, S/o Ramesh Chandel, aged 34 years,
(Non-Applicant No.2)	3. Rajiv Sharma, S/o G.S. Sharma, Aged 30 years (Owner) Respondents No.2 & 3 both are R/o Jagdalpur, Distt. Bastar (C.G.)

Appeal under Section 173 of the Motor Vehicles Act, 1988

Present : Shri Dashrath Gupta, counsel for the appellant.
Shri Alok Dewangan, counsel for respondent No.1.
Shri Avinash K. Mishra, counsel for respondents No.2 and 3.

ORAL ORDER

(Passed on 23rd of November, 2007)

Heard finally.

(2) The appellant/insurance company is aggrieved by an award dated 30-08-2006 passed by the Additional Motor Accidents Claims Tribunal, Dantewada (henceforth 'the MACT') in Claim Case No.11/05, whereby in a case of permanent disability sustained in a vehicular accident, compensation of Rs.70,000/- has been awarded.

(3) Shri Dashrath Gupta, learned counsel for the appellant/insurance company has placed reliance on an order of a Division Bench of this Court

dated 20-07-2007 passed in Miscellaneous Appeal (C.) No.818 of 2007 (***Rajesh Kumar Kaushik* vs. *Tej Narayan Singh and others***) and prayed that in the absence of any medical evidence having been adduced by respondent No.1/claimant to prove the factum of permanent disability, the appellant/insurance company was deprived of its right to cross-examine the expert witness and to question the factum of permanent disability.

(4) On the other hand, Shri Alok Dewangan, learned counsel for respondent No.1/claimant has admitted in this appeal that no medical evidence was adduced by respondent No.1/claimant for proving the disability certificate or the factum of permanent disability sustained by respondent No.1/claimant in the accident. It was prayed by learned counsel for respondent No.1/claimant that in the interest of justice an opportunity be given to respondent No.1/claimant to adduce medical evidence to prove the factum of permanent disability and certificate of disability filed before the MACT. Shri Avinash K. Mishra, learned counsel for respondents No.2 and 3 has also adopted the above argument.

(5) Shri Dashrath Gupta, learned counsel for the appellant/insurance company has no objection if the prayer of the learned counsel for respondent No.1/claimant is allowed and the matter is remanded to the MACT with a direction to give an opportunity to the claimant to adduce medical evidence to prove the factum of permanent disability sustained by respondent No.1/claimant as also the disability certificate filed in the case.

(6) In ***Rajesh Kumar Kaushik* vs. *Tej Narayan Singh and others*** (supra), this Court has observed as under:

> "**4.** Time and again, this Court has reiterated that in order to prove permanent disability the claimant is under an obligation to examine the doctor issuing the certificate of

permanent disability. In ***Sudhir Bhuiya*** **vs.** ***National Insurance Company Ltd. and another,*** **2005 ACJ 509,** it was observed as under:

> "If the appellant really wants support from the opinion of any doctor or board of doctors, the Insurance Company and the owner of the vehicle, against whom the said opinion will be used, should be given an opportunity to cross-examine those persons for the purpose of ascertaining the truth of their opinion contained in the certificate; it is preposterous to suggest that by mere producing a certificate showing that a person had become disabled, he can force the Insurance Company or the owner of the vehicle to pay compensation though the genuineness of the document is not proved and they are not in a position to cross-examine the person who has allegedly given such opinion."

"**5.** We are in complete agreement with the above observation and would further like to add that a duty is cast on the MACT to ensure that process is issued to the doctor concerned issuing certificate of permanent disability and his attendance secured in the Court. Under the Motor Vehicles Act, the MACT is under an obligation to award just and reasonable compensation and can not shirk its responsibility by taking shelter of the fact that the claimant had failed to examine the doctor issuing the certificate of permanent disability. In most of the cases in Chhattisgarh, the claimants are illiterate and poor villagers and sometimes illiterate widows, minor children etc. The Presiding Judge of the MACT in such cases should take pains to see that process is issued to the doctor concerned, his attendance secured in the Court and the insurer is given opportunity to cross-examine the doctor. The Presiding Judge of the MACT being under an obligation to award just and reasonable compensation should not remain a silent spectator during the proceedings."

(7) In view of the dictum of this Court and the rival contentions advanced in this appeal, it appears proper to give an opportunity to respondent No.1/claimant to adduce medical evidence to prove the nature of the injury sustained by him in the accident and also the fact of permanent disability.

(8) As a result, the appeal is allowed. The impugned award is set aside. The matter is remanded to the MACT with a direction to give an opportunity to respondent No.1/claimant to adduce medical evidence in support of the certificate of permanent disability produced by him to prove the factum of permanent disability. The appellant/insurance company as also respondents No.2 and 3 be also given an opportunity to adduce evidence in rebuttal, if prayed for. The MACT is directed to issue notice to the parties for appearance on 3-01-2008 and to expedite final adjudication. Record be transmitted to the MACT forthwith with a copy of this order.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Gopal